



Steven W. Troxler
Commissioner

North Carolina Department of Agriculture
and Consumer Services
Veterinary Division

R. Douglas Meckes, DVM
State Veterinarian

October 15, 2018

Terry Keith Beal
3259 Water Plant Road
Maiden, NC 28650

Re: Settlement Agreement and Confession of Judgment

Dear Mr. Beal:

Please find enclosed the Settlement Agreement we drafted incorporating all the terms of the compromise you agreed to when you spoke with Dr. Meckes by phone on October 3, 2018, and October 15, 2018.

Please review this document. If it meets with your approval, please sign and return it to Janine McLawhorn, 1001 Mail Service Center, Raleigh, North Carolina 27699-1001, **no later than Wednesday, October 24, 2018**. Please note that you must sign both the Settlement Agreement and the Confession of Judgment. You must sign page two (2) of the Confession of Judgment in the presence of a North Carolina notary public who will stamp and sign the document accordingly.

Please call me at 919-707-3244 or send me an e-mail at tien.cheng@ncagr.gov to let us know if you have any questions. Thank you for your assistance in this matter.

Sincerely,

Tien Cheng,
Attorney

Enclosures

Copy to: Janine McLawhorn, NCDA&CS
R. Douglas Meckes, DVM, NCDA&CS

IN THE MATTER OF TERRY KEITH BEAL
SETTLEMENT AGREEMENT AND RELEASE
RECITALS

This Settlement Agreement and Release ("Settlement Agreement") is made and entered into on the date reflected opposite the signature of R. Douglas Meckes, appearing below on page three (3), by and between the North Carolina Department of Agriculture & Consumer Services ("NCDA&CS") and Terry Keith Beal ("Mr. Beal").

WITNESSETH:

WHEREAS, Mr. Beal is a licensed farmed cervid producer with the license number NCFCP006 in the State of North Carolina.

WHEREAS, on or about May 15, 2018, Mr. Beal moved seventeen (17) farmed cervids, fallow deer, without a transportation permit issued by NCDA&CS in violation of 15A NCAC 10H .0301.

WHEREAS, Mr. Beal has only one farmed cervid, elk with identification number 840-003-135-571-972 remaining in his farmed cervid facility.

WHEREAS, in accordance with N.C. Gen. Stat. § 106-549.97, Mr. Beal was assessed a civil penalty of one thousand dollars (\$1,000.00) per farm cervid transported without a permit, totaling seventeen thousand dollars (\$17,000.00).

WHEREAS, the facts surrounding this violation are fully set forth in the July 13, 2018, Notice of Violations, hereby incorporated by reference, that was issued by NCDA&CS and delivered to Mr. Beal.

WHEREAS, NCDA&CS and Mr. Beal desire to compromise and settle any and all disputes arising out of or in any way connected with this matter as described above and the issues involved in the above described claim and dispute.

NOW, THEREFORE, IT IS RESOLVED that, in consideration of Mr. Beal's cooperation and entering into the terms set forth below in this Settlement Agreement, NCDA&CS has agreed to reduce the civil penalty from seventeen thousand dollars (\$17,000.00) to two thousand three hundred dollars (\$2,300.00). The following are the terms agreed to:

1. Mr. Beal shall pay the full two thousand three hundred dollars (\$2,300.00) on or before **November 30, 2018**. NCDA&CS shall deem Mr. Beal's payment as being received timely if Mr. Beal sends his payment by U.S. Mail, First-Class, prepaid and postmarked by midnight of the due date, properly addressed to Janine McLawhorn, North Carolina Department of Agriculture and Consumer Services, 1001 Mail Service Center, Raleigh, NC 27699-1001.
2. Additionally, except for the remaining elk with identification number 840-003-135-571-972, Mr. Beal shall not purchase, receive, or otherwise possess any other farmed cervid in North Carolina. Mr. Beal

agrees to be unenrolled from the farmed cervid program and to surrender his farmed cervid license upon the death, sale, or otherwise transfer of the one remaining elk. Upon the death, sale, or otherwise transfer of the one remaining elk, Mr. Beal further agrees to never apply for a farmed cervid license with NCDA&CS and NCDA&CS shall have the right to deny any farmed cervid license application received from Mr. Beal pursuant to this Settlement Agreement. This provision shall remain in effect regardless of whether full payment has been made and received by NCDA&CS and regardless of whether this Settlement Agreement has been breached or not.

3. Mr. Beal agrees to comply with all NCDA&CS laws and regulations and have no additional civil penalties from NCDA&CS for the duration Mr. Beal possess the one remaining elk. If Mr. Beal receives any civil penalties from NCDA&CS prior to the death, sale, or otherwise transfer of the one remaining elk, NCDA&CS shall have the right to immediately revoke Mr. Beal's farmed cervid license pursuant to this Settlement Agreement.

4. As further evidence of good faith and as consideration for this Settlement Agreement, Mr. Beal agrees to sign and has signed, before a Notary Public, the Confession of Judgment attached as Appendix I to this Settlement Agreement.

5. NCDA&CS hereby agrees that, so long as Mr. Beal complies with the terms of this Settlement Agreement, NCDA&CS shall forbear from bringing a civil action against Mr. Beal to collect the balance of the seventeen thousand dollar (\$17,000.00) civil penalty, and shall forbear from filing the Confession of Judgment Mr. Beal has executed and provided to NCDA&CS. Furthermore, NCDA&CS agrees that it will file the Confession of Judgment, Appendix I, only if Mr. Beal fails to make the two thousand three hundred dollar (\$2,300.00) payment in full and on time, after giving Mr. Beal notice by telephone call and e-mail message of his failure to make said payment, and after allowing Mr. Beal three (3) business days to cure his breach by paying the amount due in full.

6. NCDA&CS further agrees that, once Mr. Beal has paid the two thousand three hundred dollars (\$2,300.00) in satisfaction of the terms of this Settlement Agreement, NCDA&CS shall provide to Mr. Beal a document confirming receipt of payment and the original of Appendix I unless NCDA&CS has already filed Appendix I with a complaint by reason of Mr. Beal's breach of this Settlement Agreement.

7. No party admits or acknowledges any liability to any other party and specifically denies the existence of such liability.

8. No promise or agreement other than those recited above has been made as consideration for the releases and discharges effected by this Settlement Agreement and the parties will give these releases and discharges for the sole consideration recited above.

9. This Settlement Agreement constitutes the entire agreement of the parties. All prior understandings, representations and agreements are merged in this agreement, and this Settlement Agreement shall not be modified in any manner, except by written instrument signed by both parties.

10. The parties attest that this Settlement Agreement is voluntarily made after ample opportunity to review the document with any individuals, advisors and counsel so desired.

11. This Settlement Agreement shall be governed and interpreted by the laws of the State of North Carolina.

[SIGNATURES ON THE FOLLOWING PAGE]

Terry Keith Beal 11-13-18
Terry Keith Beal DATE
3259 Water Plant Road
Maiden, NC 28650

R. Douglas Meckes 11/27/18
R. Douglas Meckes DATE
State Veterinarian
NCDA&CS Veterinary Division
1030 Mail Service Center
Raleigh, NC 27699-1030

APPENDIX I

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
Case No.:

Defendant.

CONFESSION OF JUDGMENT

[SEE PAGE TWO]

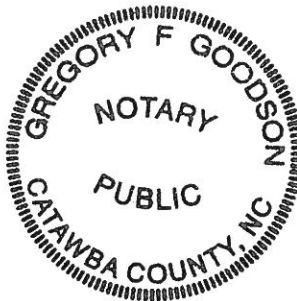
IN WITNESS WHEREOF, Defendant has hereunto set his or her hand and seal.

Terry Keith Beal
Terry Keith Beal

Sworn to and subscribed before
me this 13 day of November, 2018.

Gregory F. Goodson
Notary Public

My Commission Expires: June 6, 2020



Upon the foregoing Confession of Judgment, IT IS THEREFORE ORDERED that judgment is entered for Plaintiff against Defendant in the sum seventeen thousand dollars (\$17,000.00), with credit for payments made prior to Defendant's breach of the Settlement Agreement, as reflected below, with interest to run on the unpaid balance from July 13, 2018, together with the costs in the sum of \$_____. Defendant is given credit for payment in the sum of \$_____, which Plaintiff hereby acknowledges receipt of prior to filing of this Confession of Judgment.

This the _____ day _____, 20____.

Clerk of Court



Steven W. Troxler
Commissioner

North Carolina Department of Agriculture
and Consumer Services
Veterinary Division

David T. Marshall, DVM
State Veterinarian

May 23, 2014

Mr. Dennis Marion
1568 Prison Camp Road
Dobson, NC 27017

HAND DELIVERED BY
TRAVIS LOVE

SETTLEMENT AGREEMENT

RE: CIVIL PENALTY ASSESSMENT FOR VIOLATIONS OF NORTH CAROLINA ANIMAL DISEASE ACT, N.C. GENERAL STATUTE § 106-405.17 AND TITLE 2, N.C. ADMINISTRATIVE CODE, CHAPTER 52B, SECTION .0406

Dear Mr. Marion:

As a result of your conversation with Dr. Marshall on May 22, 2014, please find enclosed a Settlement Agreement resolving the civil penalty assessment for the above referenced matter. The Agreement reflects your promise to pay the civil penalty. You agreed to pay three payments of \$100.00, with the first being due upon receipt of this letter. You agreed to pay the second installment of \$100.00 by July 31, 2014. You agreed to pay the third installment of \$100.00 by September 30, 2014. Once you have made these three payments and if you have remained in compliance with G.S. 106-405.17, the Department agrees to waive the remaining balance of your civil penalty, \$1,700.00. Please make your checks payable to the North Carolina Department of Agriculture & Consumer Services.

A file copy has also been enclosed for your convenience. If we do not receive the signed Agreement, we will proceed with legal efforts to collect the civil penalty. If your second or third payments are not received by the due dates, NCDA&CS shall pursue collection of the full civil penalty of \$2000.00 plus interest, crediting you for what you have paid.

1030 Mail Service Center, Raleigh, North Carolina 27699-1030 • (919) 733-7601
TTY: 1-800-735-2962 Voice: 1-877-735-8200
An Equal Opportunity Affirmative Action Employer

 **COPY**

Please feel free to call me if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "David T. Marshall, DVM". The signature is fluid and cursive, with the "DVM" part written in a slightly different, more formal script.

David T. Marshall, DVM
State Veterinarian

DTM/dp
Enclosure

cc: Mr. Travis Love, Animal Health Technician
Mr. Chase Chandler, Animal Health Technician
Mr. Barry Bloch, Assistant Attorney General
Ms. Tina Hlabse, General Counsel, NCDA&CS
Dr. Sarah J. Mason, Director Animal Health Programs, Poultry
Dr. David T. Marshall, State Veterinarian

STATE OF NORTH CAROLINA
COUNTY OF SURRY

NORTH CAROLINA DEPARTMENT OF
AGRICULTURE AND CONSUMER SERVICES,
VETERINARY DIVISION

IN THE MATTER OF
MR. DENNIS MARION

) SETTLEMENT AGREEMENT
)
)
) PURSUANT TO THE ANIMAL
) DISEASE ACT, N.C. GEN. STAT.
) § 106-405.17 AND 02 N.C.A.C. 52B .0406

PURSUANT TO the provisions of N.C.Gen. Stat. §§ 150B-22 & 150B-31(b) which declare the State's policy that parties shall attempt to mediate and resolve contested matters by settlement or stipulation, this Settlement Agreement is made between the Veterinary Division of the North Carolina Department of Agriculture and Consumer Services (hereafter referred to as NCDA&CS) and Mr. Dennis Marion, 1568 Prison Camp Road, Dobson, NC 27017.

FINDINGS OF FACT

1. On May 1, 2014, Mr. Travis Love and Mr. Chase Chandler, Animal Health Technicians with the North Carolina Department of Agriculture & Consumer Services, Veterinary Division, discussed quarantine requirements with Mr. Marion. Mr. Love asked Mr. Marion how he was handling his poultry mortality.
2. Mr. Marion said he was using an incinerator and excess mortality was being placed in a dead hole. Mr. Love and Mr. Chandler went to inspect the dead hole and did not find it. Instead they found several hundred decomposing and fresh dead birds in two piles in a wooded area below the chicken houses. There were signs that several carcasses had been dragged away, and they found flies, vultures and maggots. Mr. Marion also demonstrated that his flock has suffered a higher than normal level of mortality due to a viral infection, overwhelming his ability to properly dispose of mortality using his normal method.
3. Mr. Love told Mr. Marion that this was unacceptable at any time, but especially during a diagnosed outbreak of infectious laryngotracheitis disease.
4. Mr. Love explained to Mr. Marion that emergency burial allows for daily burial to a depth of three feet, at least three hundred feet away from water.

As a result of this investigation, the North Carolina Department of Agriculture and Consumer Services, Veterinary Division, alleges that Mr. Marion, either by act or omission, violated the following provision of the N.C. General Statute § 106-549.70 and North Carolina Administrative Code 52C .0102:

Article 49E Disposal of Dead Diseased Poultry at Commercial Farms.

§ 106-549.70. Disposal pit, incinerator, or poultry composting facility required.

Every person, firm or corporation engaged in raising or producing poultry for commercial purposes shall provide and maintain a disposal pit, incinerator, or poultry composting facility of a

size and design, approved by the Department of Agriculture and Consumer Services, in which all dead poultry carcasses are disposed. This section does not apply to poultry producers with flocks of 200 or less. The definitions provided in Article 49D of this Chapter apply in this Article. (1961, c. 1197, s. 1; 1995, c. 543, s. 2; 1997-261, s. 109.)

CONCLUSIONS OF LAW

A. Mr. Marion violated N.C. General Statute § 106-549.70 and 2 N.C. Administrative Code 52C .0201 and may be assessed a civil penalty of up to \$5,000.00 per violation pursuant to N.C. Gen. Stat. § 106-405.20.

B. The Commissioner of Agriculture, pursuant to N.C. Gen.Stat. § 106-405.20, has the authority to assess civil penalties in this matter. This authority has been delegated to Dr. David T. Marshall, State Veterinarian, Veterinary Division, NCDA&CS pursuant to N.C. Gen. Stat. § 143-B-10(a).

SETTLEMENT TERMS

The Department and Mr. Marion are willing to accept a settlement of the dispute. This Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

1. That Mr. Marion hereby acknowledges and waives his right to a formal hearing under Article 3, N.C. Administrative Procedure Act, by consenting to the terms of this agreement.
2. That Mr. Marion hereby agrees to pay the sum of two thousand dollars (\$2,000.00). Mr. Marion will pay the sum of three hundred dollars and no cents (\$300.00) to the North Carolina Department of Agriculture and Consumer Services according to the following schedule:
 - a. First payment due when Mr. Marion signs this Settlement Agreement;
 - b. Second payment due by July 31, 2014; and
 - c. Third payment due by September 30, 2014.
3. Upon receipt of the third payment of \$100.00 from Mr. Marion, and so long as Mr. Marion has committed no new violations of G.S. § 106-549.70 and North Carolina Administrative Code 52C .0102, NCDA&CS agrees to waive the remaining balance of the civil penalty. Failure by Mr. Marion to make payments on time shall be deemed a breach of this agreement, unless waived by the NCDA&CS. Payment shall be deemed to have been made on time if it reaches NCDA&CS by first class U.S. Mail postmarked dated on the day that payment is due.
4. That Mr. Marion acknowledges that, upon acceptance and execution of this Agreement by the Department, the Agreement shall become a public record within the meaning of Chapter 132 of the North Carolina General Statutes and shall be subject to public inspection and dissemination pursuant to the provisions thereof.

BY CONSENT:

Dennis A. Marion Date 5-27-14

Mr. Dennis Marion
1568 Prison Camp Road
Dobson, NC 27017

David T. Marshall Date 6/5/14

David T. Marshall, DVM
State Veterinarian
NCDA&CS
Veterinary Division
1030 Mail Service Center
Raleigh, NC 27699-1030

Barry Bloch Date 6/10/14

Mr. Barry Bloch
Assistant Attorney General
N. C. Department of Justice
P. O. Box 629
Raleigh, NC 27602

Pa. 5-27-14 \$100.00
TLL

CK#1373